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IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. ..... 71 - 532

CITY OF DETROIT, a Municipal Corporation,
Petitioner-Defendant,

v.

SOCOMET, INC., a New York Corporation,
Respondent-Plaintiff,

— — —

COUNTY OF WAYNE, a body politic and corporate,
Petitioner-Defendant,

v.

SOCOMET, INC., a New York Corporation,
Respondent-Plaintiff.

PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS DIVISION I

AND APPENDIX

(For Attorneys, see inside front cover)

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
WO. 2-4715—WO. 2-4732

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Respondent-Plaintiff.

PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS DIVISION I

To: *The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Petitioners-defendants pray that a writ of certiorari issue to review the judgment of the Michigan Court of Appeals,

Division I, entered in the above-entitled consolidated actions on May 20, 1971, from which an application for leave to appeal was sought and denied by the Supreme Court of Michigan on July 21, 1971.

A. OPINIONS BELOW

The opinion of the Michigan Court of Appeals, an appellate court of said State, appear in ... N.W. .... (1971) Appendix A. It affirmed the opinion of the trial judge of June 23, 1970 which struck down an increase in the 1967 assessment against respondent-plaintiff ordered by the State Tax Commission under date of April 19, 1968 with respect to certain personal property claimed immune from local ad valorem taxes. Neither the opinion of said trial judge nor the earlier order of the State Tax Commission are reported. Same are printed as Appendices B and C.

Denial of application timely filed for leave to appeal to Supreme Court of Michigan issued on July 21, 1971 appears in ... N.W. .... (1971).

B. JURISDICTION

(1) Involved herein is a determination by the Court of Appeals affirming judgments by the trial judge for refund of personal property taxes paid under protest to the respective local treasurers. Said judgments had the effect of striking down an order of the State Tax Commission issued April 19, 1968. Procedures were available and were taken by respondent-taxpayer pursuant to state statute to institute actions in the Wayne County Circuit Court. Respondent's contention was that it was the importer or

cause of importation of certain quantities of foreign steel still in original packages on tax day, held for resale, and thereby claimed immune from taxation by virtue of Article I, Section 10, cl 2 of Constitution of the United States. Upon refusal of the State Tax Commission to accept the contention that it was the importer, respondent proceeded to trial of its court actions where it obtained judgments for refund which were upheld by the Court of Appeals.

Timely application for leave to appeal filed with the Supreme Court of Michigan by petitioners was denied July 21, 1971.

(2) Jurisdiction of this Court to issue its writ of certiorari is invoked under C. 646, 62 Stat. 929 (28 USCA 1257 (3)). The issue of constitutional immunity from local taxation being raised in each of the consolidated cases, this petition is intended to apply to all in conformance with Rule 23 (5).

C. QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

Did the finding of fact that respondent was and remained an undisclosed principal throughout two transactions to obtain foreign steel justify a conclusion that respondent was entitled to immunity as an importer in the light of decisions of this Court construing the Import-Export clause of the United States Constitution (Article I, Sec. 10, cl 2)?

Did the conclusion that an undisclosed principal was entitled under State law to the benefit of each agent's acts on his behalf as against third persons dealing with an agent have any bearing on the sovereign power of the

States to impose non-discriminatory taxes in the face of claim of immunity therefrom under the Import-Export clause?

Did the decision of the Court of Appeals unduly limit the right of State taxation and ignore the rationale of the Import-Export Clause by granting immunity as an importer to respondent in spite of the fact that the latter admittedly would not or could not obtain this imported steel itself from the specific foreign producers involved herein?

D. CONSTITUTIONAL PROVISION INVOLVED, ETC.

The provision in Article I, Sec. 10, cl. 2 of the United States Constitution reads as follows:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

Statutory provisions applicable to assessments which provide a basis for Michigan personal property taxes herein are referred to below. Being too lengthy to set forth in full, the pertinent text appears in Appendix D attached hereto.

E. STATEMENT OF THE CASE

Consolidated here for review are actions to recover personal property taxes paid under protest to the respective treasurers of petitioners city and county for 1967 through 1968. The action for the earliest year followed an increase from $399,850 to $549,290 in respondent's 1967 assessment with respect to foreign produced steel on petition by the local Board of Assessors to Michigan State Tax Commission. After hearing thereon, despite respondent's claim that it was the importer or efficient cause of importation of the contested goods and entitled to immunity by virtue of Article I, Sec. 10, cl 2 of the United States Constitution, an order was entered by the Tax Commission on April 19, 1968, increasing respondent's assessment. Respondent was not a manufacturer or a processor but had said steel in Detroit for resale.

Personal property assessments under Michigan law are ad valorem in nature and are placed against the owner or person in possession. Taxes levied against respondent based on the increased assessment by the Tax Commission were non-discriminatory, i.e. the procedures to include and value respondent's inventory of steel of foreign origin and rates of taxation were the same as in the case of any tangible personal property of domestic origin in Michigan in 1967. (App. D)

Following determination of the State Tax Commission, respondent paid the taxes thereon, commenced actions to recover same on the ground of illegality claiming immunity because it was the importer or efficient cause of importation of the foreign produced steel and entitled to the prohibition against local taxation as set forth in Article

I, Sec. 10, cl 2 of the United States Constitution. Petitioners defended by contending that respondent was but a purchaser from the actual importers in each of two separate transactions; that by reason of such purchases, the steel involved had entered domestic channels of trade and lost its characater as imported goods.

A full trial was held in Wayne Circuit Court and numerous exhibits introduced showing this foreign steel was ordered by Advance Steel Company of Detroit an unrelated steel warehousing firm in one transaction and by Philipp Bros. Far East, Inc. which was characterized as a sister corporation in the other transaction. Although it was admitted that respondent was deliberately not disclosed as principal, the trial judge held that it was the importer or efficient cause of importation acting through its nominees and accordingly was entitled to immunity. An opinion was issued June 23, 1970 (App. B) and judgments entered July 22, 1970,

On appeal to Michigan Court of Appeals, the judgments were affirmed May 20, 1971 by an opinion which held that respondent had sufficiently demonstrated that Advance Steel Co. and Philipp Bros. Far East, Inc. were its agents (App. A).....N.W.....(1971).

Timely application to appeal to Michigan Supreme Court was taken by petitioners for the purpose of exhausting their state remedies. An order denying leave was issued July 21, 1971, which left standing the decision below..... N.W.....

(a) Federal Questions Raised Below

The constitutional immunity question based on Article I, Sec. 10, cl. 2 of the Constitution of the United States was timely and properly raised at the following stages:

Before the State Tax Commission (App. C). (See paragraphs numbered 2 and 3 of order of the Commission).

Before the trial court in complaint filed (par. 22, p. 3). See paragraphs numbered 6 and 7 of opinion of trial court (App. B)

Before Michigan Court of Appeals (App. A)....N.W. .....

Said constitutional immunity was withheld by the State Tax Commission. The determination of the latter was struck down by the trial court and the Court of Appeals upheld the claim of immunity. The Supreme Court of Michigan denied leave to appeal.

F. WHAT THIS CASE DOES NOT INVOLVE

The facts presented in these appeals are distinguished in that the assessments do not involve steel brought into the United States.

(1) by purchase directly by respondent from a foreign producer or supplier;

(2) by purchase by respondent through a domestic broker or disclosed agent for it; nor

(3) for the purpose of supplying respondent with raw material to be manufactured into a finished product in its own plant.

G. REASONS FOR GRANTING THE WRIT

(a) Decision By This Court Necessary to Assure Uniform Construction of Import-Export Clause

The constitutional issues involved in respondent's 1967 actions presented for review are typically being raised more often in Michigan although the facts may vary in respondent's consolidated cases from others who have challenged assessments with respect to goods brought into this State from foreign sources. The amounts of city, county and school taxes in contention are pyramiding in amount due to the ever increasing volume of foreign goods arriving in ports on the Great Lakes from overseas and claimed immune under the import-export clause of the United States Constitution.

Early consideration by this Court of the power of a local unit of the State to include such imports in common with domestic goods subject to taxation under the facts herein is urgently required. It would provide much needed guidelines and eliminate much of the still pending litigation. Moreover, it would insure application of uniform procedures by local assessing officers were this Court to consider and define who is an importer in the constitutional sense and thereby entitled to immunity.

(b) Failure to Apply Constitutional Principles

The error of the Court of Appeals in affirming judgments which struck down State Tax Commission assessments against respondent consisted chiefly of failure to apply constitutional principles established by this Court, *Brown v. Maryland* (1827), 12 Wheat (U.S.) 419, 441, 6 L.Ed. 678, 686, *Low v. Austin* (1872), 13 Wall. (U.S.) 29, 20 L.Ed. 519; *Pervear v. Commonwealth of Massachusetts* (1867), 72 US 608, 5 Wall. 475; *Waring v. Mayor of Mobile* (1869), 75 US 342, 8 Wall. 110, to the acknowledged facts of these cases.

The opinion of the court below stated that:

> "The question of primary concern is whether plaintiff is an importer under Article I, § 10, Cl 2, supra."

The court proceeded to cite its previous decision in *City of Detroit v. Kenval Products* (1968) 165 NW 2d 875.[1] In that action, great reliance was placed on *Hooven and Allison v. Evatt* (1945) 324 US 652, 65 S. Ct. 870, 89 L.Ed. 1252. The latter decision is distinguishable from the facts of the present matter, however:

> (a) because it involved a firm engaged in manufacturing and it was therefore held to be efficient cause of importation of the goods, the purpose and effect of acquisition of which was for manufacture into finished goods, and
>
> (b) because as the opinion in *Hooven and Allison* indicated, a prime characteristic of one claiming that

---

[1] Application for certiorari was denied in a companion case to *Kenval, Detroit v. Ambassador Steel Co.* (1969, 396 U.S. 833).

> it was the efficient cause of importation is that the alleged middleman signed as agent for or "for account of" his named principal. (p. 659 of 324 US).

The facts presently before the Court show respondent was a purchaser for resale and was not a named principal for whom either alleged middleman acted openly as agent for or "for account of" respondent. It is submitted that it was a purchaser and not first vendor of the foreign steel. It was accordingly as subject to taxation as was the personal property in *Waring v. Mayor of Mobile, supra.*

(c) Constitutional Safeguards Overlooked by Court Below.

Error of the Michigan Court of Appeals consisted of extending the doctrine of constitutional immunity of imports from local taxation beyond limits established by decisions of the Court.

The holding in favor of respondent overlooked the first question proposed in *Hooven and Allison, supra,* at p. 658 of 324 US which was to consider whether petitioner, *Hooven and Allison,* was the importer. The majority opinion concluded that the latter was the importer under those facts at p. 661.

Here, the Court has different facts, in this instance by the admission that respondent was an undisclosed principal. In *Youngstown Sheet and Tube Co. v. Bowers* (1959), 358 US 534, 3 L.Ed.2d 490, 79 S. Ct. 383, the following appeared at top of 544 of 358 US:

> "But the record there did not present and this Court did not reach or decide the question we have here. Indeed the Court expressly reserved it."

It is respectfully suggested that uniform administration of assessment procedures with respect to foreign goods brought into Michigan as well as other States depends on clarification of the term "importer" by this Court. Otherwise field auditors, representing assessing officials will be hard pressed to determine what personal property of foreign origin is to be included in an assessment or excluded when held by one claiming to be an importer.

Documents which may indicate that respondent purchased goods directly from an overseas source or from a domestic-based firm acting as agent for a named principal create no problem. Their rights as importers under the Constitution are readily recognized. However, a claim of immunity based on "efficient cause of importation" by an undisclosed principal requires an auditor to accept a contention which is generally unsupported by and in the present instances is contradicted by documents available for examination.

By granting opportunity for hearing to petitioners, the entire subject of constitutional immunity under the Import-Export clause can be clarified and rendered possible for future consistent use by this and inferior courts.

CONCLUSION

We urge upon the Court the desirability, perhaps the necessity, of distinguishing its decision in *Hooven and Allison* from applicability to the facts here presented. Opportunity should be given to furnish this Court full facts and arguments in briefs and in open hearing. Absent some guiding definition, it will leave the phrase "efficient cause of importation" which this Court applied to the facts in

Hooven and Allison, supra, controlling transactions herein which have been distinguished by the findings of the court below. To equate "the efficient cause of importation" with the "importer" under these circumstances will permit much foreign goods, even though domesticated, to be placed beyond the taxing jurisdiction of the states and their taxing units.

There can be no question that the constitutional immunity of imports from taxation by the states and their municipalities must be protected. But such protection should not proceed beyond any perceivable necessity to the benefit of a privileged class of taxpayers at the expense of the power of the states and their municipalities to impose taxes for their own support. The importer, that person or entity which directly causes the bringing of foreign goods into this country for himself or for a disclosed principal is to be shielded from taxation of the foreign goods while the property is in the hands of either in the original package. But these foreign-produced goods should not be placed beyond the state's taxing jurisdiction after their transfer by any importing entity to domestic wholesalers where both acted as principals. Having been acted upon by such an importer, these foreign goods were domesticated and became a part of the general mass of property within the State, subject to the same benefits and burdens as all other property.

A proper balance between the interests of the nation warranting the protection of channels of importation and the interests of the states and their municipalities in equitable and uniform taxation for their own support should, it is prayed, be re-established by a decision herein upon the merits.

Wherefore, petitioners request that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: October 11, 1971

APPENDIX A

STATE OF MICHIGAN

COURT OF APPEALS

Division 1

Socomet, Inc., a New York Corporation, Plaintiff-Appellee, v. City of Detroit, a municipal corporation, Defendant-Appellant	No. 10037, 10038 10039, 10040
Socomet, Inc., a New York Corporation, Plaintiff-Appellee, v. County of Wayne, a body politic and corporate, Defendant-Appellant	No. 10041, 10042

OPINION OF THE MICHIGAN COURT OF APPEALS

Before: Gilllis, P. J., Fitzgerald and T. M. Burns, JJ.

Fitzgerald, J.

This appeal arises from judgment entered in six consolidated actions ordering a refund of personal property taxes for 1967 which the plaintiff paid under protest to the defendant city in the amount of $25,324.48 and to the defendant county in the amount of $3,916.44.

The actions were consolidated dealing with 1967, 1968, and 1969 taxes. However, the trial judge limited the proofs to plaintiff's cases arising out of 1967 taxes. The remain-

ing actions relating to 1968-1969 taxes were held in abeyance pending decision of the first group.

The subject of the assessments were certain quantities of foreign steel still in the orignal packages and brought into Detroit in 1966 for resale. The steel was in storage in several warehouses on tax day, December 31, 1966. Plaintiff had not done business in Detroit prior thereto, had no office in Detroit, had no processing facilities in Michigan, and maintained no domestic steel on hand.

Plaintiff had filed a 1967 personal property return showing the above mentioned steel in its inventory but claimed it was all tax free on the basis that it was imported steel in the original packages and in warehouses under its control. Therefore, it was claimed exempt or immune under Article I, § 10, cl 2, of the Constitution of the United States.

The Board of Assessors of defendant city had first placed an assessment on the rolls for 1967 against plaintiff in the amount of $600,000. When plaintiff's personal property statement was received, it showed the value of its steel in Detroit warehouses as $799,659. The assessment was thereupon reduced to 50% of the latter amount, or $399,850, subject to investigation.

After correspondence with plaintiff and an audit conducted at plaintiff's New York office, the Board of Assessors petitioned the Michigan State Tax Commission to increase plaintiff's 1967 assessment. After a hearing, an order was issued April 19, 1968, which increased plaintiff's assessment to $549,290.

The steel in question arrived in Detroit as a result of two types of transactions.

One transaction is referred to as the Advance Steel Co.-Gosho transaction, wherein Advance Steel allegedly acted

as agent for the plaintiff in buying steel from Gosho. The plaintiff was an undisclosed principal. The defendants denied the agency and called as their witness Mr. Joseph Stewart, the president of Advance Steel. Certain documents evidencing an agency relationship were admitted and Mr. Stewart testified that Advance Steel acted as an agent for plaintiff in acquiring the steel.

Testimony and exhibits concerning the Advance Steel-Gosho transaction showed the following:

(1) Plaintiff financed the entire purchase.

(2) Documents of title were always within the control of the plaintiff.

(3) Advance made the purchase only after it agreed to act as agent for the hidden principal, the plaintiff.

(4) The purchase was for the plaintiff's account.

(5) Advance Steel never claimed any right, title or interest in the steel and never used any of its own funds.

(6) At the time the agency was created, the steel had not been fabricated, produced or ordered in Japan.

(7) Specifications for the contracted tonnage (gauge, size, etc.) came from the plaintiff as it determined its needs from time to time and the Japanese producer produced those specifications.

The second type of transaction involved purchases by a corporation known as Phillip Brothers Far East. Testimony elicited from witnesses during trial indicated that:

(1) All of the stock of the plaintiff and of Far East as well as many other forms, was held by the same parent corporation.

(2) The officers and directors of one corporation also served the other.

(3 All salaries are paid by the parent corporation.

(4) Plaintiff is the selling arm for steel in the United States.

(5) Plaintiff determines through its agents how much steel to purchase, the specifications of the steel, the port of entry and time of entry.

(6) Far East places orders in Japan for the ultimate account of the plaintiff which resells the steel in the United States.

(7) All purchases are financed by the parent corporation.

(8) Plaintiff was the first and only owner of the steel when it arrived in the United States.

(9) Title to the steel vested in plaintiff before the steel arrived in the United States and in some cases before it left the foreign port. In all cases, plaintiff had control of the title documents from the time the foreign producer receives payment in a foreign country by satisfaction of the letter of credit supplied by the parent corporation.

(10) All letters of credit were always satisfied befor the steel left the foreign producer's control.

(11) All activities of Far East and of plaintiff were for the benefit of the same parent corporation.

The trial court found that in both types of transactions the plaintiff was the importer within the constitutional meaning and was entitled to immunity from the personal property tax. The trial court ordered a refund of the taxes

paid by the plaintiff to the defendants in the approximate amount of $30,000.

The defendants appeal from all six judgments.

Article I, § 10, Cl 2, of the United States Constitution provides:

> "No state shall, without the consent of Congress, lay any imposts or duties on imports or exports . . ."

MCLA § 211.1 (Stat Ann 1960 Rev §71) provides:

> "That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

The question of primary concern is whether plaintiff is an importer under Article I, § 10 Cl 2, *supra*. A review of the leading cases interpreting US Const, Art I, § 10, Cl 2, supra, may be found in *City of Detroit v. Kenwal Products* (1968), 14 Mich App 657, 659, wherein this Court stated:

> "In *Brown v. Maryland* (1827), 25 US (12 Wheat) 419 (6 L Ed 678), the Supreme Court invalidated a state licensing tax and held that *a state could not tax imports as long as the property remained in its original form or package. Low v. Austin* (1872), 80 U.S. (13 Wall), 29 (20 L Ed 517), expanded the principles of *Brown v. Maryland to prohibit states from levying ad valorem taxes on goods which have not lost their character as imports.* See also *City of Detroit v. Lake Superior Paper Company* (1918), 202 Mich 22. Subsequent to *Brown v. Maryland, supra,* it has become well-established that imports lose their constitutional immunity when the importer (1) sells them or (2) 'breaks up the packages' or (3) puts them to

> the use for which they were imported. *Youngstown Sheet & Tube Company v. Bowers* (1959), 358 US 534 (79 S Ct 383, 3 L 2d 490)." (Emphasis supplied.)

Defendants argue that plaintiff purchased and imported steel from the original importers and, therefore, was not constitutionally immune from taxation as an importer. Plaintiff contends that the steel was imported by its agents who were acting under its control and direction.

In *Hooven & Allison Co. v. Evatt* (1945), 324 US 652, 633 (65 S Ct 870, 89 L Ed 1252) the United States Supreme Court held:

> "*When the merchandise is brought from another country* to the United States, the extent of *its* constitutional immunity from state taxation *turns on the essential nature of the transaction,* considered in the light of the constitutional purpose, *and not on the formalities with which the importation is conducted* or on the technical procedures by which it is effected." (emphasis supplied.)

It is a general rule that an undisclosed principal is entitled, as against third persons dealing with his agent, to the benefit of the agent's acts on his behalf. See *Grand Rapids Milk Producers Ass'n v. McGavin* (1941), 295 Mich 477; *American Enameled Brick & Tile Co. v. Brozek* (1930), 251 Mich 7; *Jenness v. Shaw* (1876), 35 Mich 20. See, also, *First National Bank v. Federal Reserve Bank* (C.A.), 6 F2d 339, 344. There is no dispute that Advance Steel and Phillip Brothers Far East obligated the foreign producers to sell steel on credit, ship the goods to an American port and make delivery in consideration of the obligation to accept and pay said foreign sources therefor.

With these facts before us, the question now seems to turn on the sufficiency and weight of the evidence. More precisely stated, whether plaintiff sufficiently demonstrated that Advance Steel and Phillip Brothers Far East were its agents. GSR 1963, 517.1, which deals with findings by the court, provides in part:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment. It will be sufficient if the court makes brief, definite, and pertinent findings and conclusions upon the contested matters without over-elaboration of detail or particularization of facts. • • • Requests for findings are not necessary for purposes of review. No exception need be taken to any finding or decision. Findings of fact shall not be set aside unless clearly erroneous • • • regard shall be given to the special opportunity of the trial court to judge the credibility of those witnesses who apeared before it. [As amended February 13, 1969, immed. effect.]"

Therefore, a careful review of the record clearly indicates that the trial court's findings are adequately supported, and had we heard the testimony and observed the witnesses, we would not have reached a different result.

Affirmed. No costs, a public question.

APPENDIX B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYE

Socomet, Inc., Plaintiff, v. City of Detroit, Defendant.	General Civil Actions Nos. 93203 101819 115885
Socomet, Inc., Plaintiff, v. County of Wayne, Defendant.	General Civil Actions Nos. 101818 116070

OPINION ORDERING REFUND OF TAXES PAID UNDER PROTEST FOR YEAR 1967

Plaintiff, a New York corporation, instituted a series of actions against the City of Detroit and the County of Wayne, as defendants, to obtain a refund of personal property taxes paid under protest for the years 1967-1970.[1]

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[1] A total of ten cases have been commenced to date. The above five cases relate to 1967 taxes paid to the City, in the total amount of $25,324.48, and paid to the County, in the amount of $3,916.44; and five cases (Nos. 115884, 139839, 139840, 149423 and 14924) relate to 1968 and 1969 taxes paid.

By agreement, and on order of the Court, all pending cases were consolidated for trial.[2] However, when the consolidated actions came on for trial, proofs were limited to the 1967 taxes, and trial of the remaining consolidated cases, relating to 1968-1969 taxes, was held in abeyance, pending decision of the Court regarding the 1967 taxes.[3]

Based on the pleadings, the pre-trial statements, the proofs (consisting of testimony of witnesses and voluminous exhibits), the proposed findings of fact and law and briefs submitted by counsel for the respective parties, the Court now hereby makes its findings of fact, as follows:[4]

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[2] The order of consolidation was signed by the Hon. Thomas J. Foley on October 3, 1969, and provided that the title of all cases be carried in the name of Socomet, Inc., as plaintiff (Philipp Brothers Far East, Inc., a New York corporation, was named as plaintiff in No. 139840). The order expressly stated: "* * * to the extent that the proceedings in the consolidated cases may develop separate issues, claims or defenses in the respective actions, the Court may order a separate trial of any such issues, claims or defenses, and may make such other and further orders concerning these proceedings as it deems just and equitable." Actions commenced after the order of consolidation have been consolidated herein by agreement between the parties.

[3] Plaintiff claims no separate issues were developed and no request for separate trials was made for 1968-1969 taxes, claiming inferentially that decision governs the untried cases. We hold either party may supplement the testimonial record herein, if need be, as to any new issues present in the untried cases.

[4] Generally speaking, counsel do not disagree regarding the facts or law. They disagree regarding the interpretation thereof and the permissible inferences to be made therefrom. The Court has attempted to recite verbatim the claims of the parties and the findings of counsel, where adopted by the Court. Acknowledgment is made of the excellent and helpful briefs of counsel. The Court also acknowledges with gratitude counsel's sympathetic understanding of the reasons for delay in concluding and releasing this opinion.

Findings of Fact

1. These are consolidated actions for refund of 1967 personal property taxes paid under protest to the City of Detroit, in the amount of $25,324.48, and paid to the County of Wayne, in the amount of $3,916.44, by plaintiff, Socomet, Inc., a New York corporation.[5]

2. The basic question for determination is whether plaintiff was the importer or, as plaintiff claims, the efficient cause of importation of certain quantities of foreign steel, still in the original wrappings, which it had in storage in several warehouses located in Detroit on tax day, December 31, 1966.

3. Plaintiff had filed a 1967 personal property return showing the above steel in its inventory, but claimed it was all tax free, on the basis that it was imported steel in the original packages and in warehouses under its control. Therefore, it was claimed exempt or immune under Article I, Sec. 10, cl. 2, of the United States Constitution (Ex. 1-A).

4. The Board of Assessors had first placed an assessment on the rolls for 1967 against plaintiff in the amount of $600,000. When plaintiff's personal property statement was received, it showed the value of its steel in Detroit warehouses as $799,659. The assessment was thereupon reduced to fifty per cent of the latter amount, or $399,850, subject to investigation (Ex. 1-G).

5. After correspondence with plaintiff and an audit conducted at its office in New York, the Board of Assessors

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[5] The protests in the consolidated cases were all validly made, and defendants concede there are no procedural irregularities which would prevent a refund, although their pleadings stated otherwise.

petitioned the State Tax Commission to increase plaintiff's 1967 assessment. After a hearing, an order was issued April 19, 1968, which increased plaintiff's assessment to $549,290 (Ex. 1-V).

6. It was the position of the Board of Assessors that plaintiff's claim of immunity was not supported by documents furnished by Socomet, which on their face showed Socomet was not an importer of the steel in question but a purchaser from an importer; in short, that by entering the channels of trade, the steel had lost its character as imported goods (*Waring v. Mayor of Mobile,* 75 US 342, 8 Wall 110 [1869]) and was, therefore, subject to ad valorem taxation—a position sustained by the State Tax Commission, which ordered the increased value of the steel to be placed on the City of Detroit personal property assessment rolls.[6]

7. Plaintiff's claim is that while the documents may show on their face that the steel in question was ordered by Advance Steel Company and Philipp Brothers Far East, Inc., as purchasers, from foreign steel manfacturers, the fact is that Advance Steel was simply its nominee, acting for plaintiff, a hidden or undisclosed principal, and that Far East, a sister corporation, acted as its alter ego in the transaction. Plaintiff claims, therefore, that it was the efficient cause of importation and the steel was immune from state taxation, by reason of Article I, Sec. 10, cl. 2, of the Constitution of the United States and the cases con-

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[6] "* * * it has become well established that imports lose their constitutional immunity when the importer (1) sells them or (2) 'breaks up the packages' or (3) puts them to the use for which they are imported. *Youngstown Sheet & Tube Company v. Bowers* (1959), 358 US 534 (79 S Ct 383, 3 L Ed 2d 490)." *City of Detroit v. Kenwal Products,* 14 Mich App 657 (1968), cert den in 396 US 833 (1969).

struing the provision: *Hooven and Allison v. Evatt,* 324 US 652, 89 L Ed 1252 (1944), and *City of Detroit v. Kenwal Products, supra,* Footnote 6.

8. The steel which plaintiff had in Detroit on December 31, 1966, was brought in from Japan as a result of several transactions, although they were essentially two types of transactions, hereinafter referred to as the Advance Steel Co.—Gosho Trading Co. order and the Philipp Brothers Far East, Inc.—C. Itoh order.

The Advance Steel Co.—Gosho Trading Co. Order

9. All documents between Advance and Gosho evidenced a sale between them for approximately 10,000 tons of steel:

(a) Purchase orders, Contract No. Z-2389, dated February 23, 1966, and Contract No. Z-2731, dated June 24, 1966 (Exs. 14 and 15).

(b) Special customs invoices on the forms of United States Bureau of Customs, dated August 19, 1966, naming Gosho as exporter and Advance as importer at point of shipment (Exs. 3-B, 3-E and 3-H).

(c) Payment to Gosho Trading Co. effected by letters of credit drawn July 21, 1966 (Ex. 16), on the Irving Trust Co. for account of Advance Steel Co.; another dated July 15, 1966 (Ex. 19);[7] letters of credit

[7] Attached to Ex. 19 is letter dated August 2, 1966, from plaintiff to Irving Trust Co., requesting that Socomet's name not appear in the transaction. Also, an amendment dated August 3 contained a postscript which said: "P.S. Imperative that the name of Socomet, Inc. and/or Phillip Brothers does not appear anywhere on amendment." Plaintiff remained in the background as an undisclosed principal because Gosho Trading Co. would not have sold any steel to plaintiff.

applied for by plaintiff with the Chase Manhattan Bank by order of and for account of Advance Steel Co., which Joseph Stewart signed as president of Advance Steel Co. on forms of Chase Manhattan Bank, March 29, 1966 (Ex. 17), and on March 14, 1966 (Ex. 18).

10. However, it is clear from the testimony of Mr. Stewart, who was called as a witness by defendants, that the purchase order was executed *after* an agreement had been reached between Advance and Socomet that Advance was to act simply as an agent and was to contract for the steel with Gosho, not for its own account, but for the account of Socomet, its hidden or undisclosed principal, to whom Gosho would never have directly sold its steel.[8]

11. The arrangement between Socomet and Advance that Advance was acting as its agent was confirmed by letters from plaintiff, dated March 17, 1966, March 22, 1966, and July 26, 1966, respectively (Exs. 2-A, 2-B and 2-C).

12. At no time has Advance claimed any right, title or interest in the steel in question, nor claimed it purchased

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[8] Testimony of Joseph Stewart indicated he was president, principal buyer, and in charge of all operations of Advance Steel Co. While in New York City in February 1966, he called on Milton Stark at the office of Gosho Trading Co. He was told there was approximately 10,000 tons of steel available at a certain price. Stewart first offered the steel to Milikowsky Bros., with whom he had previous business dealings, and was then taken by Amos Milo to the office of Philip Brothers Far East, Inc., where he concluded an arrangement for the steel with Mr. Yitzhak (or Isaac) Ben-Ami, who made purchases of foreign steel for Socomet, with the understanding that Advance was to purchase the steel on Socomet's account, as hidden principal, and Advance was to receive a commission of $2.00 per ton. Stewart then called Stark at Gosho Trading and told him Advance would buy the steel at the price quoted. Thereafter, Advance pursuant to the above understanding, executed Exs. 14 and 15, the purchase orders.

the steel for its account and with its own funds. On the contrary, it has at all times acknowledged Socomet's ownership, possession and control of the steel, the purchase of which was financed by Socomet.[9] At the time of the initial arrangement between Advance and Socomet, the steel in question had not been fabricated, produced or ordered. The determination of specifications therefor was Socomet's sole responsibility, to be communicated to Gosho through Amos Milo on instructions from Socomet.

13. Socomet's agreement to pay Advance a commission of $2.00 per ton was modified (no explanation therefor given at trial) to $1.00 per ton, payable when Socomet sold the steel in question and received payment therefor (Ex. 20). Advance received the agreed commission.[10]

Philipp Brothers Far East, Inc—C. Itoh Order

14. The balance of the steel in question was secured through various purchases from C. Itoh, a foreign steel manufacturer, by Philipp Brothers Far East, Inc., hereafter referred to as Far East.

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[9] Socomet and its parent corporation paid for letters of credit and financed the entire transaction. The letters of credit (Ex. 16) required blank endorsement of the bills of lading and delivery of the bills of lading so endorsed at the time of payment by the correspondent bank. Exhibit 17, from Chase Manhattan Bank, states: "All documents to be delivered to Socomet, Inc." Ex. 18 states the same thing. Stewart testified he agreed to such handling of the documents of title, and his written agreement to such handling also appears at the bottom of Exs. 17 and 18. Of course, Gosho knew nothing about the conditions in the letters of credit or the hidden principal.

[10] Payment was not made directly by Socomet to Advance, but by way of a credit memo or by deduction from a debt owed by Advance to Milikowsky Bros., who, in turn, were reimbursed by Socomet. A copy of the modified agreement (Ex. 20) was received by Milikowsky Bros.

15. The following documents between Far East and C. Itoh clearly evidence sales by C. Itoh to Far East and subsequent sales by Far East to Socomet:

(a) Invoice orders (Exs. 6-A and 6-B), dated January 24, 1966, and January 18, 1966, respectively.

(b) Special customs invoices on the forms of United States Bureau of Customs, dated March 3, 1966, naming C. Itoh as exporter and Far East as importer at point of shipment (Exs. 6-E and 6-F).

(c) Bill of sale from Far East to Socomet, dated April 7, 1966 (Ex. 6-G), while the shipment was on the high seas, after the date of bills of lading corresponding with the special customs invoices, i.e., March 3, 1966. The price to Socomet was the same.

(d) Similar patterns of carrying out their transactions appear by Exhibits 7-F through 7-J and 7-L; 8-F through 8-J and 8-L; 9-E, -F and -G; 10-B and -D; 11-E through 11-H and 11-L.

16. All bills of sale to Socomet were dated subsequent to transactions for sale of the steel by C. Itoh and its shipment of same to Far East.[11]

17. On the basis of this evidence, defendants claim that Socomet was clearly a purchaser from an importer and

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[11] No applications for letters of credit for payment to C. Itoh were produced for introduction into evidence as were provided in connection with the payment to Gosbo, supra. However, reference to letters of credit for payment to C. Itoh appears in the invoices to Philipp Brothers Far East, Inc. (All letters of credit were supplied and guaranteed by the parent corporation. See Footnote 12.)

that the steel, therefore, is subject to state taxation, as appears from state and federal decisions interpreting the federal constitutional provisions which are relied on by Socomet herein (Art. I, Sec. 8, and Sec. 10, cl. 2).[12]

18. Plaintiff's testimonially supported claim is that Socomet and Far East, were sister corporations, all of whose stock was owned by the parent corporation, and that the

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[12] John Taylor, testifying for defendants, related that the goal of the Board of Assessors was to treat all taxpayers alike. To accomplish this, directives were given to the field men in the personal property division to report on all investigations involving foreign goods claimed immune. Any documents available were to be examined, and where an agency was claimed, the taxpayer was requested to show proofs supporting it. Where not on hand, requests were made to see, particularly, bills of lading, special customs documentz and invoices from the foreign shipper.

Mr. Taylor reviewed the two transactions and noted that the first lot of steel was covered by documents naming Gosho Trading Co. as seller and Advance Steel Co. as purchaser. Likewise, he pointed out that the second lot of steel was shown to have been sold by C. Itoh to Philipp Brothers Far East, Inc. He pointed out that, in the several transactions, the purchases by plaintiff were later in time than the documents from the exporters to the first purchasers. He also noted that the documents dealing with the shipments showed that the shipments were made for the account and risk of Advance Steel Co. and Philipp Brothers Far East, Inc.

In concluding, Mr. Taylor admitted that plaintiff was the first owner of the steel on its arrival in the United States. However, on re-direct examination, he stated that plaintiff was not the first purchaser from either Gosho Trading Co. or C. Itoh. His final answer was: "No, not according to the documents."

With respect to the foregoing, plaintiff claims that defendants ignored the statement of agency in Exs. 2-A, 2-B and 2-C and the requirement that the Board of Assessors determine who was the efficient cause of importation. Plaintiff concludes that Mr. Taylor's review was prejudiced and designed to avoid Exs. 2-A, 2-B and 2-C and avoid a determination of why the steel was purchased, for whom, and who was the efficient cause of the importation.

purchases made by Far East were made as the agent or alter ego of Socomet.[12]

19. Plaintiff's witness, James Kritzer, described the functions of the two companies and the scheme of operations. His testimony stands uncontradicted, and a brief summary thereof follows:

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[12] James Kritzer, testifying on behalf of plaintiff, stated that in 1966 Philipp Brothers Far East, Inc., Socomet, Inc., and Metal Transport, Inc.—all New York corporations—were divisions of Minerals & Chemicals Philipp Corporation, which had 100 corporations, more or less, under its tent. Far East, licensed to do business in Japan, with offices in Tokyo and Osaka, was its ferrous acquiring arm; Socomet was its selling arm of foreign-produced steel in the United States and Metal Transport was its transportation arm (ocean and otherwise). These corporations were located in the same office on Park Avenue, New York City and had no employees, but they did have common officers—i.e., Mr. Ben-Ami was vice-president of Far East and Socomet—who likewise were officers of the parent corporation. Employees of the parent corporation rendered whatever services were required by the complex of corporations and were paid by the parent corporation.

In 1967, the parent corporation, the sole stockholder of Far East, Socomet, and other corporations in the complex, merged with, and its name was changed to, Englehard Minerals and Chemicals Corporation.

Mr. Kritzer further testified that Far East limited its purchases to ferrous items produced in Japan, for the reason that all of the business of such a firm was taxable, and that Socomet—which bought and sold ferrous items in several countries—made no direct purchases from Japan.

Mr. Kritzer did not personally participate in purchases, but he did have charge of moving, delivering and warehousing of steel shipments. He described the operations as follows: Generally, on Socomet's request and on its behalf, Far East placed early orders for large quantities from sources in Japan of certain gauges and quality with the hopeful expectation that the steel could be sold in this country at a profit. Details and directions were given later to have production and shipment dovetail to meet the opening of the St. Lawrence Seaway in April, up to its closing sometime in November. Transit time was approximately six weeks. If a shipment left Japan early in October, the steel could be delivered and the ship could still leave via the Seaway before the end of November. Arrangements for a letter of credit from a New York bank were necessary, because the steel would not be permitted to leave Japan before receipt by a Japanese bank of the letter of credit.

Socomet acted as selling agent in the United States for foreign-produced steel. It decided, through agents, how much steel and what specifications it expected to sell in the United States. It then caused its agents, who were also officers and agents of other corporations, such as Far East, to purchase quantities in accordance with those specifications.

Socomet decided when shipment should arrive and at what port of entry.

Title documents ultimately vested in Socomet before the steel arrived in the United States, and in some cases before it left the foreign port, but Socomet had control of the title documents from the time the letter of credit was satisfied.

All documents of title were either in order form or to a broker or to a banker or to an agent for Socomet, for the use and control of and ultimate disposition by Socomet, which had the right of resale in transit and which took all the risk of loss in transit, as well as market risk.

Regardless of documentation at the time the steel arrived in the United States, Socomet was the owner of the steel.

All activities of Far East and Socomet redounded to the benefit of the parent corporation.

Conclusions of Law

1. The 1967 personal property taxes involved were the result of ad valorem assessments made by the Detroit Board of Assessors and an increase ordered by the Michigan State Tax Commission after hearing a petition of the Board of Assessors. The County of Wayne has no assessing department. By law, the county tax roll is prepared by the Board of Assessors and is likewise affected by action of the State Tax Commission. Said taxes are based on P.A. 1893, No. 206 (MCLA § 211.1 et seq., Mich Stats Ann § 7.1 et seq.), as amended, and are non-discriminatory, affecting all real and personal property in Michigan not expressly declared immune or exempt by law. Thus, they are not levied exclusively against owners of goods of foreign origin but, rather, are levied indiscriminately against all those tangible goods located in any of the various units of Michigan where they may be found on tax day (December 31, 1966, in this matter.)

2. The goods involved here were coils or bundles of steel of Japanese manufacture which plaintiff had in storage in several warehouses in the City of Detroit on tax day. These goods were still in their original packages and were not intended for anything but sale by plaintiff.

3. This steel which plaintiff had in Detroit on tax day would be entitled to immunity from local taxation as an import if the revelant facts in evidence bring said steel within the provision of Article I, Sec. 10, cl. 2, of the United States Constitution, as same has been construed and applied by the Supreme Court of the United States. Brief review of these cases follows:

4. In *Brown v. Maryland,* 12 Wheat (US) 419 (1827), the court held unconstitutional a license tax on the sale

by the importer of goods stored in his warehouse in the original packages in which they were imported, stating:

> "It is sufficient for the present to say generally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has perhaps lost its distinctive character as an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the constatution." (p. 441)

5. *Low v. Austin*, 80 US 29 (20 L Ed 517) (1872), expanded that principle to hold it also prohibited an ad valorem tax on goods which have not yet lost their character as imports. Accord: *City of Detroit v. Lake Superior Paper Co.*, 202 Mich 22 (1918), holding in favor of the taxpayer whose newsprint imported from Canada was stored in its warehouse in Detroit on tax day.

6. *Waring v. Mayor of Mobile*, 75 US 342, 8 Wall 110 (1869), followed the principle laid down by Chief Justice Marshall in *Brown v. Maryland*, supra, that when the Importer had acted upon the thing imported so that it might lose its distinctive character as an import, it became subject to the taxing power of the state. In *Waring*, salt was brought to Mobile, Alabama, by the ship owner and sold by the captain to Waring after it arrived in port. At p. 346, the court stated:

> "But the sales of the goods imported in this case were made by the shippers or consignees, and the complainant was the purchaser, and not the first vendor of the imported merchandise, and it is settled

law in this court that merchandise in the original packages once sold by the importer is taxable as other property. *Pervear v. Commonwealth,* 5 Wall 479 (72 U.S. XVIII, 609." (1867)

7. In *Hooven and Allison Co. v. Evatt, supra,* immunity was granted petitioner, the complaining taxpayer, on the basis that it was the efficient cause of importation. Petitioner had negotiated with brokers to buy products it needed for manufacture and to arrange shipment therefor. The state contended that the sellers or their agents, and not petitioner, were the importers and that the merchandise after sale to petitioner had ceased being an import immune from taxation. We quote at length the opinion of the court, beginning on page 1262, 89 L Ed:

> "For the purpose of determining whether petitioner was the importer in the constitutional sense, it is *immaterial* whether the title to the merchandise imported vested in him who caused it to be brought to this country at the time of shipment or only after its arrival here * * * For in determining the meaning and application of the constitutional provisions, *we are concerned with matters of substance not of form.* When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the *essential nature of the transaction,* considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected * * * . Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or

a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in others is to ignore the constitutional purpose and substitute form for substance.

"As we have said, *the constitutional purpose is to protect the exclusive power of the national government to tax imports and to prevent what in matter of substance would amount to the imposition of additional import duties by states in which the property might be found or stored before its sale or use.* It is evident that the constitutional prohibition envisages the present transaction, quite as much as if the petitioner had sent his own agent abroad where he had purchased and paid for the merchandise and shipped it to petitioner in this country. The purpose and result of the transaction are the same in either case. *The apprehension evils of the local taxation of imports* after their arrival here are the same.

"It is enough for present purposes that the merchandise in this case was imported; and that petitioner was the *efficient cause of its importation,* the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods." (Emphasis ours)

8. In *Youngstown Sheet and Tube Co. v. Bowers,* 358 US 534, 3 L Ed 2d 490 (1959) immunity was denied to a taxpayer, a processor, who had so acted upon the imported materials as to cause them to lose their distinctive character as imports. In the course of its opinion, the court analytically dissected the views of Chief Justice Marshall in *Brown v. Maryland,* supra, and, in discussing *Hooven and Allison,* noted:

"But the record there did not present and this Court did not reach or decide, the question we have here. Indeed the Court expressly reserved it." (p. 544)

9. *City of Detroit v. Kenval Products Corp.:* 14 Mich App 657 (1968),[14] dealt with the first of eleven local steel warehousing companies. The several assessments placed against these companies by the Tax Commission for 1966 with respect to steel brought into Detroit from overseas were vacated. The opinion of the Court of Appeals held that these taxpayers were entitled to immunity under the efficient-cause-of-importation doctrine urged by their counsel and adopted from *Hooven and Allison.* The Court stated, in part:

"Perhaps, the most significant substantive matter which the Supreme Court emphasized in *Hooven,* supra, 661, was the fact that performance of the contract called for, and necessarily resulted in, importation of the merchandise. Defendants' contracts with the domestic intermediaries specified that the steel was to be shipped from a foregin country or was already enroute directly to the defendants. *Performance of these contracts then, as in Hooven, called for, and necessarily resulted in, importation.*" (p. 661) (Emphasis ours)

10. Plaintiff's claim of immunity must stand or fall on the record made in this court, consisting principally of a great number of exhibits, the last of which was No. 20, and the testimony of plaintiff's witness, James Kritzer, and defendants' witnesses, Joseph Stewart, president of

[14] Leave to appeal was denied by the Michigan Supreme Court on March 20, 1969, in 381 Mich 811; and certiorari was denied by the United States Supreme Court on October 13, 1969, in 396 US 833.

Advance Steel Co., and John Taylor, a principal accountant in the personal property division of the Board of Assessors.

11. The steel being of foreign origin and still in the original wrappings in Detroit on tax day, it remains to be ascertained whether (1) plaintiff was the importer or efficient cause of importation and (2) the steel had not been acted upon so as to lose its distinctive character as an import.

12. The general rule in this state and also in the federal courts is that a taxpayer claiming immunity from a tax has the burden of proof. *Detroit v. Detroit Commercial College,* 322 Mich 142, 148 (1948); *Evanston YMCA Camp v. State Tax Commission,* 369 Mich 1, 7 (1962); *New York Central Co. v. City of Detroit,* 354 Mich 637, 649 (1958): "The burden of proof rests with plaintiffs of proving their allegations upon which their claim is based particularly where it is sought to have a tax declared invalid (citing cases)." "This burden is never met merely by showing a fair difference of opinion which as an original matter might be decided differently." *Norton Co. v. Department of Revenue,* 340 US 534, 537-8 (1950). A taxpayer " • • • cannot escape taxation by claiming the benefits of a proviso or an exemption contained in the statute, unless he plainly and unmistakably establishes its right thereto." *Thomas E. Basham Co. v. Lucas,* 21 F2d 550, 551 (1927). Accord. *Asiatic Trans-Pacific, Inc. v. R. G. Maddox,* 371 F 2d 132, 135 (1967) *S. S. Kresge Co. v. Bennett, Atty. General of N. Y.,* 51 F2d 353 (Headnote 3) (1931); *City of Orange, Texas, v. Levingston Shipbuilding Co.,* 258 F 2d 240 (Headnote 2) (1958); *Pepsi-Cola Bottling Co. v. Dist. of Columbia,* 337 F 2d 109 (Headnote 2) (1964).

13. As to the first lot of steel which plaintiff acquired through its dealings with Joseph Stewart of Advance

Steel Co., defendants contend that plaintiff has not sustained the burden of proof required by the foregoing cited cases that it was the importer, for the reason that it was not the first purchaser of the steel from Gosho Trading Co., since in all the documents showing Gosho as exporter only Advance Steel Co. was named as purchaser and importer. Defendants discount the letters confirming the agency relationship existing between Advance and plaintiff (Exs. 2-A, 2-B and 2-C), because of their self-serving character and the further fact that they *post-date* the contract between Advance and Gosho. Moreover, defendants seek to discredit plaintiff's claim, stating in their proposed findings:

"No satisfactory explanation has been given by plaintiff nor by Joseph Stewart of why the compensation received by Advance Steel Co. came, not from plaintiff at $2.00 per ton, but by a credit allowed by Milikowsky Bros. at $1.00 per ton, for steel which the latter had sold to Advance. While Mr. Stewart was subpoenaed by defendants, his testimony obviously reflected self-interest as head of a steel wholesaling firm.

"While Mr. Stewart may have turned to plaintiff for specifications, directions and instructions to transmit to Gosho, as far as the latter was concerned Mr. Stewart was dealing with Gosho as a principal and not as an agent. Mr. Kritzer acknowledged that plaintiff was not able to obtain steel from Gosho Trading Co. because of some previous differences. It was therefore obliged to assume the role of a 'hidden principal' or, as the Court characterized it, 'an undisclosed principal'. This casts a cloud on the often repeated cry of looking through form to substance.

"In *Hooven and Allison,* the opinion of the Supreme Court specified there that one of the characteristics of one claiming that it was the efficient cause of importation is

that the alleged middleman signed 'as agent for or "for account of" *his named principal*'. (p. 659 of 324 US) (Emphasis supplied)

"The foreign producer was not required to sell, ship and deliver to plaintiff in the manner set forth in *Hooven and Allison* (p. 661 of 324 US). At Gosho's end, the transaction was a voidable one. Plaintiff obtained the steel by use of a subterfuge. However, it should not be permitted to hoodwink local assessing officials by such tactics. The annual assessing process comes and goes by all too quickly for anyone to learn the facts which have been only partially unscrambled at great expense and with much effort herein."

14. As stated in *Hooven*, supra, the constitutional purpose is to protect the exclusive power of the national government to tax imports. Consequently, our entire attention must be focused upon whether or not the entire transaction herein "called for, and necessarily resulted in, importation." If it were not for plaintiff herein, would this steel have been shipped at that specific time, from that manufacturer, and in the manner it was?

15. Plaintiff has indeed established to our satisfaction that it caused the purchase of the steel to be made through Mr. Stewart of Advance Steel, who placed the order on plaintiff's request, on its behalf and for its needs. Indisputably, Advance has never asserted or claimed any right, title, interest or possessory claim in the steel. Plaintiff, in fact, determined the specifications of quantity, quality, sizes and gauges before the steel was fabricated, and plaintiff and/or its parent corporation financed the entire transaction. It was only after making arrangements for the payment of a commission of $2.00 per ton by Socomet to Advance that Advance's Stewart placed the order with Milton Stark of Gosho Trading Co.

16. There can be no question on this record—and there is none in the Court's mind—that Socomet, acting through Advance as its agent or nominee, caused the steel to be brought to the Port of Detroit, USA. All of the title documents were either in order form, to a broker, to a banker, or to an agent of Socomet, for the use and control of and ultimate disposition by Socomet. From the time the steel in question was paid for by satisfaction of the letter of credit which had been purchased by Socomet—and certainly from the time the steel was placed on board a carrier in Japan—and the seller had received payment under the letter of credit, Socomet, and only Socomet, could determine disposition of the steel. Socomet was, therefore, the efficient cause of the importation, and decision herein is controlled by the principles set forth in *Hooven*, supra, and *City of Detroit v. Kenwal Products Corporation*, supra, and not, as claimed by defendants, by the *Waring* case, which involved an out-and-out sale by a consignee.

True, in *Hooven*, supra, the documentation on its face showed that the contract form was executed by the broker, "who signs as agent for" or "for account of" his named principal (p. 659). Of what legal importance is the documentation if it is otherwise established by credible testimony that the transaction was, in fact, made for a hidden or undisclosed principal? We are mandated to look beyond the form to the substance. To fail to do so would be tantamount to ignoring the intent of the framers of our Constitution. In composing the import-export clause, the framers were not so much afraid of undisclosed principals as they were overly eager city and state taxing authorities. As so suitably stated by Justice Musmano in *Urban Redevelopment Condemnation Case*, 406 Pa. 6, 11 (1962):*

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* Sub nom. *In re Appointment of Viewers*, 178 A 2d 142, 181 (1962).

"It is true that taxes are the lifeblood of any government, but it cannot be overlooked that that blood is taken from the arteries of the taxpayers and, therefore, the transfusion is not to be accomplished except in accordance with the scientific methods specifically prescribed by the sovereign • • • "

17. As to the second lot of steel, defendants concede that Far East could be said to be the alter ego of Socomet, since they are sister corporations, 100% stock-controlled by the parent corporation, Minerals & Chemicals Philipp Corporation. Defendants contend, however, that, under the circumstances of this case, the legal concept fiction of alter ego should not be employed nor allowed. Defendants strenuously urge the total unfairness of applying the concept to this case. They say Far East purchased the steel in its name in Japan "to avoid unduly extended taxation on the part of Japan." Far East then sold the steel while en route to the United States, so that a sister corporation (Socomet) could then claim it was the importer or efficient cause of importation and thus claim a tax immunity under the import-export clause of the United States Constitution when the steel entered the United States. These sister corporations "are blowing hot and cold in the same breath," say defendants, and by doing so they avoid taxation in Japan and in the United States. They say that, since Far East is "indelibly marked as the importer of the goods," the doctrine of alter ego should not be countenanced, because "• • • such a contrived scheme to obtain the avoidance at both ends, compounds the result. If condoned, it becomes tax evasion. Plaintiff should not be permitted to have the benefit of its claimed immunity from a non-discriminatory ad valorem assessment when the steel came to rest under these circumstances."

Reluctantly, we must agree with plaintiff that "Japanese law is not at stake, but a principle of American constitutional law." The law condemns tax evasion, not tax avoidance. Japan is free to plug this loophole or to deal with Far East under Japanese law, whatever that may be. While we are impressed with defendants' difficulties in the circumstances herein set forth, relief must come, not from the courts, but from the legislative branch of the government.

18. Decision herein with respect to the Advance order applies equally to the Far East order. We conclude, therefore, that Socomet has sustained its burden of proof and has clearly and unmistakably shown that it was the importer or efficient cause of importation of the steel covered by the Far East order, thus rendering the steel immune from state taxation.

19. Plaintiff is entitled to a refund of the 1967 city and county personal property taxes paid under protest.

20. Accordingly, an appropriate judgment may be entered in favor of plaintiff and against the City of Detroit, in the amount of $25,324.48, with interest, and against the County of Wayne, in the amount of $3,916.44, with interest. A public question being involved, no costs are assessed.

21. An approved judgment may be presented for signature, or judgment may be settled by motion on two days' notice.

James Montante,
Circuit Judge.

Dated: June 23, 1970

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APPENDIX C

MEETING OF THE MICHIGAN TAX COMMISSION (and Order)

STATE OF MICHIGAN
BEFORE THE MICHIGAN STATE TAX COMMISSION

At a meeting of the Michigan State Tax Commission held on the 29th day of February, 1968 at Lansing, Michigan.

In re Appeal No. 2425 and Petition No. 9-791 of Socomet, Inc., city of Detroit, county of Wayne, State of Michigan.

The above taxpayer appeals from the assessment (as confirmed by the Board of Review of the city of Detroit) of personal property located in the city of Detroit, county of Wayne, State of Michigan, in the amount of $549,290.

The taxpayer contends that the valuation of the property on appeal is excessive because it includes property immune from ad valorem taxation and the assessment exceeds 50% of true cash value.

The Commission caused an investigation to be made of appellant's complaint. A hearing was held on January 25, 1968 at Detroit, Michigan, at which hearing appellant did not appear but was represented by written brief. The hearing was held to afford the appellant an opportunity to present any evidence it had in support of its contentions.

After consideration of the contentions of the appellant and the city of Detroit, along with information, if any,

gathered by the Commission's staff, the following findings of facts result:

1. The primary issue involved in this dispute is not one of valuation of property but the assessability of certain steel inventories imported from foreign manufacturers.

2. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and therefore has lost its character of imported good by entering the channels of trade and subject to ad valorem taxation.

3. The taxpayer claims that it is the importer of this steel and as such the imported product should remain immune from ad valorem taxation under Article 1, Section 10, Chapter 2 of the United States Constitution:

> "No State shall, without the consent of Congress, lay any imposts or duties on Imports or Exports. . . ."

4. Taxable property, both real and personal in the city of Detroit is assessed at a significant range of from 48% to 52% of true cash value, or a weighted mathematical average of 50% which is sustained by equalization studies made by the Commission, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

After these findings of facts and the consideration of all the information contained therein the Commission is of the opinion that the steel inventory is assessable and not immune from ad valorem taxation under Article 1, Section 10, Chapter 2 of the United States Constitution. On the basis

of documents, exhibits etc., the Commission finds that the appellant is not the importer of the steel and that the taxpayer has failed to establish the right of immunity from taxation. The same parties and facts are before the Commission in Petition No. 9-791 of the city of Detroit, which petition is hereby incorporated into and made a part of this appeal.

WHEREFORE, It is hereby ordered that the amount of $549,290 be placed upon the assessment roll as the true and lawful value of property under this appeal.

Robert L. Purnell, Chairman
R. Gerald Barr, Commissioner
Ward G. Dexel, Commissioner

April 19, 1968

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane, Secretary

APPENDIX D

STATUTES OF MICHIGAN

Compiled Laws of Michigan 1948, 211.1

"Sec. 1. That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

Compiled Laws of Michigan 1948, 211.2

"Sec. 2. • • •

Tax day, preparation of assessment roll, examination of properties by assessors. The taxable status of persons and real and personal property shall be determined as of each December 31, which shall be deemed the tax day for the immediately succeeding calendar year, which is also the tax year, any provisions in the charter of any city or village to the contrary notwithstanding. No assessing officer shall be restricted to any particular period in the preparation of the assessment roll but may survey, examine or review properties at any time prior to or after the tax day."

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Compiled Laws of Michigan 1948, 211.8

"Sec. 8. For the purposes of taxation, personal property shall include:

1. All royalties;

2. All goods, chattels and effects within the state;

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8. All other personal property not herein enumerated, and not especially exempted by law;"

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Compiled Laws of Michigan 1948, 211.13

§7.13. Taxable situs of personal property; date of determination; unknown owner; assessment to beneficial owner; security interests; goods and wares used in trade, commerce or manufacture, average monthly inventory; survey, examination or review of property. Sec. 13. All tangible personal property, except as provided in section 14, shall be assessed to the owner thereof, if known, in the township in which it is located on the tax day. If the owner is not known and there is a person, firm or corporation beneficially entitled to any tangible personal property or having charge or possession thereof, then to such person, firm or corporation: Provided, That one having a security interest without possession may not be assessed as an owner of tangible personal property: Provided, That when tangible personal property is assessed to a person, firm or corporation in charge or possession of such property, such person, firm or corporation shall, unless contrary to a contractual provision, have a right of action for the amount of such taxes against the owner or person beneficially entitled to such property.

Inventories of goods, wares, materials, merchandise and supplies such as are commonly used in trade or commerce or manufacture shall, upon the filing by the owner thereof of a sworn statement with the assessing officer showing the total of such inventories for each of the preceding 12 months ending December 31, be assessed on the basis of the average monthly inventory for such 12-month period. The average monthly inventory shall be computed on the basis of the

number of months during which said inventories of goods, wares, merchandise and supplies had a taxable situs in the assessing district. No assessing officer shall be restricted to any particular period in the preparation of the assessment roll but may survey, examine or review properties at any time prior to or after said tax day.

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Compiled Laws of Michigan 1948, 211.14

§7.14 Exceptions to general rule as to taxable situs. Sec. 14.

Business goods and chattels. (1) All goods and chattels situate in some township other than where the owner resides shall be assessed in the township where situate and not elswhere [sic].

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